IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.1.2005

CORAM:

THE HONOURABLE MR.JUSTICE V.KANAGARAJ

AND

THE HONOURABLE MR.JUSTICE S.SARDAR ZACKRIA HUSSAIN

W.A.NO.1595 OF 1998

B.H.E.L. Mazdoor Sangam
Regn.No.494, Trichy Bharat
Heavy Electricals Limited,
Trichy-14 rep by its
General Secretary,
M.Krishnamoorthy .. Appellant{ Accepted the cause title as per order of court dt.17.11.98 in CMP 16657/98]

Vs.

M/s Bharat Heavy Electricals Limited,
High Pressure Boiler Plant,
Trichy-4 rep. by its
Executive Director. .. Respondent

* * *

This Writ Appeal has been filed against the order dated 7.9.1998 made in W.P.No.14527 of 1989.

For Appellant: Mr.S.Kannaian
for Mr.G.Ethirajulu

For Respondent: Mr.B.T.Seshadri

* * *

JUDGMENT

The writ appeal has been filed praying to set aside the order dated 7.9.1998 made in W.P.No.14527 of 1989.

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2. The petitioner herein has filed a writ petition praying to issue a writ of Mandamus directing the respondent to frame suitable rules uniformly for fixing eligibility period in the cadre of Security Sub-Inspector Grade III and Senior Security Guard Grade III for further promotion to the post of Security Sub-Inspector Grade II and Senior Security Guard Grade II respectively and consequently promote the employees in the orders of Senior Security Guard Grade III to the post of Senior Security Guard Grade II with effect from 24.6.1989 treating them as equal cadre with that of Security Sub-Inspector Grade III.

3. The brief facts of the case of the petitioner Sangam are that the recruitment promotion and various other service conditions of the employees of the respondent are governed by the Personnel Manual. The promotion from one group to another group or cadre is on the basis of merits as asserted through a selection process and the employees are eligible for consideration for promotion on completion of a specified number of years of service; that the promotion will be considered by Departmental Promotion Committee constituted at the unit level for various grades and the criteria for considering the promotion will broadly include factors such as qualifications, performance, general suitability on potential for higher responsibility. Some of the petitioner's members were initially appointed as Security Guards in Group B II in category II, their further promotion was either to the post of Security Sub-Inspector Grade III or Senior Security Guard Grade III in Group B III. According to them, after completion of six years of services in the post of Security Guards, the respondent herein called for an interview numbering 21 employees to assess their suitability for promotion to the post of Security Sub-Inspector Grade III/Senior Security Guard III by its office Memo dated 7.6.1984 in Ref.No.BP.Bldg.4 No.24;that surprisingly, after assessing the suitability and merits, some of them who were qualified for promotion were promoted as Security Sub-Inspector Grade III and some of them as Senior Security Guard Grade III in the next higher Group III on 22.6.1984. It is stated by the petitioner that those employees who were promoted on 22.6.1984 to the post of Security Sub-Inspector Grade III were further promoted to the post of Security Sub-Inspector Grade II on 25.6.1989 on completion of 5 years period in the post of security Sub-Inspector Grade III. But those candidates promoted as Senior Security Guard Grade III on 22.6.1984 are still kept in the same post without any promotion and it was made clear that they will not be given any promotion in the near future. None of the promotees were called upon to exercise their option to the respective posts. The promotion to the said post was made according to the whims and fancies of the selection committee. While making the promotion, it was made to believe that both the posts are equal in rank and scale and they are eligible for

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further promotion uniformly and simultaneously and they will be treated as equals in all aspects relating to the service conditions. Believing the same, they neither made any protest nor exercised their option, while accepting the promotion. As per the personnel manual, it is also made clear that both the posts are placed in one Group and the scale of pay and service conditions are the same. The avenue for further promotion for them is, to the post of Senior Security Guard Grade II and Security II and Security Sub-Inspector Grade II respectively. That being so, some of the employees in the post of Sub-Inspector Grade III were promoted to the post of Sub-Inspector Grade II. The said promotion was granted within five years. Whereas the employees promoted to the post of Senior Security Guard Grade III are not given any promotion to the post of Senior Security Guard Grade II. Thus the respondent herein indiscriminately adopting two different eligibility period for further promotion between the two cadre within the same group. They state that all cadre in the Group B III shall constitute a homogenous class. By prescribing different qualified period for one of them will mean dividing this homogenous class and the equals are treated differently without any reasonable basis. Due to the arbitrary fixing of eligibility period those who were promoted to the post of Sub-Inspector Grade III along with senior Security Guard Grade III earned their promotion and they were placed in the higher cadre, whereas the employees who were promoted as Senior Security Guard Grade III are continued to remain in the same post. So far the respondent has not made known the eligibility period to the Senior Security Guard grade III to the next higher grade. Aggrieved by the said anomaly created by the respondent, a number of representations were made by the aggrieved persons who are stationed in the cadre of Senior Security Guard Grade Iii for the past several years. Even though the representation were received by the respondent, they have miserably failed to consider the legal and genuine demands of the members of the petitioner Sangam.

4. The learned Single Judge has opined that there is no arbitrary fixing of eligibility period and it is consistent with promotion policy which is uniformly and consistently followed in all the units of the respondent, that the respondent has followed the norms and guidelines of the Corporate Office in respect of the promotion of the Senior Security Guard Grade-III and Security Sub Inspector Grade-III to Grade-II is in the Normal Channel though the scale of two categories are one and the same, that the eligibility period for both the categories are not uniform and consistently promotions are made only on this basis year to year and the petitioner cannot plead ignorance of the same and that therefore there is no discrimination of the two categories and they are belonging to different channels of promotion viz. Normal channel and Side

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channels even though they are holding the same scale of pay. Thus, the petitioners herein have miserably failed to make out any case in their favour.

5. Aggrieved over the same, the petitioner preferred an appeal before this Court on the grounds that the promotion policy introduced by the respondent to the cadre of Senior Security Guard Grade III is arbitrary; that the learned Single Judge has misconstrued the pleading of the respondent and thereby erred in holding that the promotion policy was made known to the petitioner in the year 1976 itself without any documentary evidence to prove the same; that the learned Single Judge erred in holding that the policy decision and the eligibility period fixed by the respondent in respect of promotion to the cadre of Senior security Guard Grade III to Senior security Guard Grade II cannot be questioned by the employees of the establishment; that the policy decision of the employer can be questioned by the employee when the same is inconsistent between two homogenous classes; that the reasons assigned by the respondent for introducing side channel and fixing two different eligible periods for the promotion to the post of Senior Security Guard III and Security Sub Inspector Grade III from the post of Security Guard in the counter to the affidavit is different from the letter dated 2.7.1980; that the learned Single Judge erred in holding that the employees should have refused to accept the promotion as senior Security Guard Grade III and to wait for their chances to get selected as Security Sub-Inspector Grade III; that the learned Single Judge erred in holding that the employees who accepted the promotion in the cadre of Senior Security Guard Grade III can seek their promotion only in the said channel and they cannot compare themselves with the employees promoted as Security Sub-Inspector Grade III in the main channel; that the learned Single Judge erred in holding that the side channel was introduced only to avoid stagnation in one particular scale of pay which is contrary to the reasons assigned by the respondent; that the participation of the Union in respect of policy decision cannot be an information to the employees who actually suffered out of the said policy; that the learned Judge erred in holding that even though the scale of pay to the post of Senior security Guard Grade III and security Sub Inspector Grade III are same, but the condition, nature of duties are different; that the learned Single Judge erred in holding that the employees in the cadre of Group B-III are not homogenous class since they were divided into two channels viz. Main channel and Side channel.

6. Learned Counsel for the appellant would rely on the following Judgment:

(1) Union of India and others Vs. S.L.Dutta and

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another (AIR 1991 SUPREME COURT 363)

(2) Bahadursinh Lakhubhai Gohil Vs. Jagadishbhai M.Kamalia and Others (2004) 2 Supreme Court Cases 65.

7. So far as the first judgment cited above is concerned, the same has been cited before the learned single Judge, who extracting the relevant paragraph 18, would state that the Honourable Supreme Court has refused to interfere with the change in policy relating to promotional chances of officers in Navigation Stream in Flying Branch of Air Force; that though the said case was related to Air Force, the ratio laid down therein by the Honourable Apex Court is applicable to the present case and therefore, the learned single Judge would feel that the above judgment is only in favour of the respondent, rendering support to the case of the respondent.

8. So far as the second judgment cited on the part of the petitioners is concerned, particularly from paragraph No.4 which is relied on by the petitioners, this Court is able to see that in a land acquisition proceeding, the original owner of the property from whom the land has been acquired for a public purpose has come forward to pray re-conveyance of the property in his favour since the land acquired has not been utilised by the Government for the purpose for which it was acquired and therefore the observations made by the Honourable Apex Court therein become inapplicable to the facts of the case in hand.

9. In consideration of the facts pleaded, having regard to the materials placed on record and upon hearing the learned counsel for both, what could be assessed from the above Writ Appeal filed on the part of the petitioner Sangam as against the order of the learned single Judge dated 7.9.1998 made in the writ petition is that the petitioner is sticking to a single point that some of the members of the petitioner Sangam were initially appointed as Security Guards in Group B-II in Category-II, their further promotion was either to the post of Security Sub Inspector Grade-III or Senior Security Guard Grade-III in Group B-III; that on completion of six years of service in the post of Security Guards mentioned above, after assessing the suitability and merits, some of them who were qualified for promotion were promoted as Security Sub Inspectors Grade-III and some of them as Senior Security Guards Grade-III in the next higher Group III on 22.6.1984 and the employees who were promoted to the Post of Security Sub Inspector Grade-III were further promoted to the post of Security Sub Inspector Grade-II on 25.6.1989 on completion of five years period in the post of Security Sub Inspector Grade-III, but those candidates who were promoted as Senior Security Guards Grade-III on 22.6.1984 have been still

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kept in the same post without any promotion and there is no possibility of them being promoted in the near future and therefore the petitioners would call that the promotions were made to the whims and fancies of the Selection Committee.

10. According to the petitioners, it was made to believe that both the posts are equal in rank and scale of pay and they are eligible for further promotion uniformly and simultaneously and they would be treated as equals in all aspects relating to the service conditions and as per the Personnel Manual, it is made clear that both the Guards are placed in one group and the scale of pay and the service conditions are one and the same. While that being so, some from the post of the Sub Inspector Grade-III were promoted to the Sub Inspector Grade-II while the Senior Security Guards Grade-III are not given any promotion to the post of Senior Security Guard Grade-II adopting two different eligibility standards for promotion between the two cadres within the same group in spite of both constituting homogenous class and the classes are treated differently without any reasonable basis.

11. This argument of the petitioners has not been accepted by the learned single Judge who would find no arbitrary fixation of eligibility period and the same was consistant with the promotion policy which is uniformly and consistently followed in all the units of the respondent. It would further be pointed out that the respondent has followed the norms and guidelines of the Corporate Office in respect of the promotions of both the categories and though the scale of two categories are the same, the eligibility standards and period for both the categories are not uniform and that promotions have been made only on this basis and the petitioner cannot plead ignorance of the same, and therefore, there is no discrimination of the two categories since they belong to different channels of promotions viz. Normal Channel and Side Channel, even though they are holding the same scale of pay. The learned single Judge would feel that the petitioners have miserably failed to make out any case in their favour.

12. On a fair assessment of the case of the petitioners, it is an admitted case on their part that the petitioners were made to believe that both the posts were equal in rank and scale of pay and that they were eligible for further promotion uniformly and simultaneously and further they would be treated as equals in all aspects relating to the service conditions believing which they neither made any protest nor exercised their option while accepting the promotion and that they were further under the impression that both the posts were placed in one group and the scale of pay and the service conditions are the same. These averments admittedly made on the part of the petitioners in

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their pleadings themselves would go to show that under the impression that things would be in accordance with their thinking, the petitioners have been under miserable misconception relating to the service conditions of the posts in question and it is not the learned single Judge who has misconstrued the pleadings and erred in holding that the promotion policy was made known to the petitioners well in advance but it is only the petitioners who have misconstrued the promotional chances of both the categories and the learned single Judge in holding that the employees in the cadre of Group B-III are not homogenous classes since they were divided into two channels - the Normal Channel and the Side Channel - has only declared the service condition that is prevalent and it is not an invention by the learned single Judge. Therefore, the learned single Judge has held that the employees who accepted the promotion in the cadre of Senior Security Guard Grade-III can seek their promotion only in the said Channel and they cannot compare themselves with the employees promoted as Security Sub Inspector Grade-III in the main channel; that the Side Channel was introduced only to avoid stagnation in one particular scale of pay; that the Union has participated in the policy of decisions and therefore the petitioner was well informed of the actual position and policy. On such sound reasons assigned, the learned single Judge has arrived at the conclusion to dismiss the writ petition filed by the petitioner Sangam thereby refusing to grant the relief sought for.

13. On a careful perusal of the order passed by the learned single Judge, this Court is able to see that the said order has been passed on sound reasons and based on the existing conditions of service which are distinct and different for both the categories of posts and the petitioner cannot amalgamate both into one and seek the same chances to be afforded to them. The learned single Judge has fairly made out a distinction between the Normal Channel and the Side Channel which have been inherited not from out of imagination but from out of the Manual bearing the service conditions and therefore this Court does not find any valid or tangible reason existing to cause its interference into the well considered and merited order passed by the learned single Judge and hence the following judgment:

In result,

(i) the above Writ Appeal does not merit acceptance but becomes liable only to be dismissed and is dismissed accordingly.

(ii) The order dated 7.9.1998 made in W.P.No.14527 of 1989 by the learned single Judge of this Court is confirmed.

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However, in the circumstances of the case, there shall be no order as to costs.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

vjy/Rao

1. THE EXECUTIVE DIRECTOR
   BHARAT HEAVY ELECTRICAL LIMITED,
   HIGH PRESSURE BOILER PLANT, TRICHY.4.

+1 C.C to M/s R.Govindaraj Advocate S.R. 2230

+ 1 C.C. To Mr.B.T. Seshadri Advocate S.r. 1850

Pre-delivery
Judgment in Writ A.No.1595/1998
18.1.2005.

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